

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,
vs.

MONTE L. WOLF, Executor of the Estate of
Harry J. Wolf, deceased, Appellee.

Transcript of Record

Appeal from the United States District Court for the
District of Oregon

FILED

MAY 24 1956

PAUL P. O'BRIEN, CLERK



No. 15011

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,
vs.

MONTE L. WOLF, Executor of the Estate of
Harry J. Wolf, deceased, Appellee.

Transcript of Record

Appeal from the United States District Court for the
District of Oregon

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer to Complaint.....	34
Appeal:	
Certificate of Clerk to Transcript of Record on	78
Designation of Record on (DC).....	74
Designation of Record on (USCA).....	85
Motion and Order to Consolidate Cases for Hearing on (USCA).....	83
Motion for Order Extending Time to File Record and Docket.....	72
Notice of	72
Order Extending Time to File Record and Docket	73
Order Releasing Exhibits on.....	75
Statement of Points on (USCA).....	81
Certificate of Clerk to Transcript of Record...	78
Complaint	3
Exhibit A—Claim for Refund.....	11

Designation of Contents of Record on Appeal (DC)	74
Designation of the Records for Printing and Motion to Waive Printing of Part of Records (USCA)	85
Docket Entries	76
Findings of Fact and Conclusions of Law.....	68
Judgment	71
Minutes of the Court:	
Nov. 2, 1953—Hearing on Motion to Dismiss Complaint	33
Motion and Order to Consolidate Cases for Briefs and Hearing (USCA).....	83
Motion for Order Extending Time for Filing and Docketing Record.....	72
Motion to Consolidate (DC).....	31
Motion to Dismiss Complaint.....	31
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	72
Order Consolidating Cases for Hearing and De- termination (DC)	33
Order Consolidating Cases for Trial (DC).....	40
Order Extending Time for Filing and Docket- ing Record	73

Order Releasing Exhibits.....	75
Pre-Trial Order	41
Defendant's Exhibit 1—Computation, Acquiescence and Decision.....	53
Statement of Points Upon Which Appellant Intends to Rely (USCA).....	81
Stipulation for the Entry of an Order Consolidating Cases for Trial.....	39
Transcript of Proceedings of July 25, 1955....	79

NAMES AND ADDRESSES OF ATTORNEYS

CHARLES K. RICE,

Asst. U. S. Attorney General,

Dept. of Justice, Washington, D. C.,

C. E. LUCKEY,

United States Attorney,

VICTOR E. HARR,

Asst. U. S. Attorney,

United States Courthouse,

Portland, Oregon,

For Appellant.

JACOB, JONES & BROWN,

Public Service Building,

Portland 4, Oregon, and

S. J. BISCHOFF,

902 Cascade Building,

Portland, Oregon,

For Appellee.

In the District Court of the United States for the
District of Oregon

Civil No. 7097

MONTE L. WOLF, Executor of the Estate of
Harry J. Wolf, deceased,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

COMPLAINT

For cause of action against the defendant, plaintiff complains and alleges as follows:

I.

This is a civil action and arises under the laws of the United States of America providing for Internal Revenue, and jurisdiction rests upon Title 28, United States Code, Section 1340, and Title 28, United States Code, Section 1346.

II.

During the calendar years 1942 and 1943, and until his death on February 6, 1948, Harry J. Wolf was a resident of the County of Multnomah, State of Oregon and was then and until his death a citizen of the United States of America.

III.

Plaintiff herein is the duly qualified and acting Executor of the Estate of Harry J. Wolf, deceased,

to whom letters testamentary were granted by the Circuit Court (Probate Department) for the County of Multnomah, State of Oregon, on February 16, 1948.

IV.

At all times from September 1, 1947, to and including October 30, 1952, Hugh H. Earle was the duly commissioned, qualified and acting United States Collector of Internal Revenue for the District of Oregon, and the said Hugh H. Earle is no longer in office.

V.

At all times from July 17, 1933 to and including August 31, 1947, James W. Maloney was the duly commissioned, qualified and acting United States Collector of Internal Revenue for the District of Oregon, and the said James W. Maloney is no longer in office.

VI.

During all times mentioned herein the decedent, Harry J. Wolf, kept his personal books and made and filed his income and victory tax returns on the cash receipts and disbursements and calendar year basis.

VII.

That during all times during the taxable years 1942 and 1943, the decedent, Harry J. Wolf, was a member of a partnership known as Alaska Junk Company. Said partnership was comprised of the decedent, Harry J. Wolf, Rose Schnitzer, Sam Schnitzer and Jennie Wolf. Said partnership dur-

ing all times mentioned herein filed its partnership income tax information returns on a calendar year and accrual basis.

VIII.

For the calendar year 1942 Alaska Junk Company reported gross sales in the amount of \$2,038,-384.76 on its partnership income tax information return filed on or about March 15, 1943. Included in said purported gross sales were certain items of merchandise delivered to a corporation known as Oregon Electric Steel Rolling Mills in the sum of \$243,975.86, the amount of said items being carried on the books of said Alaska Junk Company as accounts receivable.

IX.

The net income as reported on the information tax return of Alaska Junk Company for 1942 was in the amount of \$236,123.45, of which amount the decedent Harry J. Wolf reported on his individual income and victory tax return the sum of \$64,-030.86, said tax return being filed on or about March 15, 1943, and said Sam Schnitzer paid said taxes to said James W. Maloney, the then Collector of Internal Revenue for the District of Oregon.

X.

For the calendar year 1943, Alaska Junk Company reported gross sales in the amount of \$1,463,-365.76 on its partnership income tax information return filed on or about March 15, 1944. Included in said purported gross sales were certain items of merchandise delivered to a corporation known as

Oregon Electric Steel Rolling Mills in the sum of \$103,365.76, the amount of said items being carried on the books of said Alaska Junk Company as accounts receivable.

XI.

The net income as reported on the information tax return of Alaska Junk Company for the calendar year 1943 was in the amount of \$246,055.71, of which the decedent, Harry J. Wolf, reported on his individual income and victory tax return the sum of \$66,513.93, said tax return being filed on or about March 15, 1944, and said Harry J. Wolf paid said taxes on or before said date, to said James W. Maloney, the then Collector of Internal Revenue for the District of Oregon.

XII.

In computing the net income of Alaska Junk Company for the calendar year 1943, a loss was claimed on its income tax information return of \$202,350.60 for bad debts on account of the aforementioned merchandise delivered to Oregon Electric Steel Rolling Mills, the amount of which said items had theretofore been carried on the books of Alaska Junk Company as accounts receivable.

XIII.

On or about March 3, 1947, the Commissioner of Internal Revenue determined that the aforementioned loss on account of merchandise delivered to Oregon Electric Steel Rolling Mills was in fact a

capital contribution to said corporation and was not a proper bad debt deduction.

XIV.

On or about March 3, 1947, the Commissioner of Internal Revenue asserted a deficiency against the decedent, Harry J. Wolf, by reason of the disallowance of the bad debt deduction that had been taken on the income tax return of Alaska Junk Company.

XV.

On June 2, 1947, the decedent, Harry J. Wolf, filed his petition with the Tax Court of the United States contending the determination of the Commissioner of Internal Revenue that said accounts receivable of Oregon Electric Steel Rolling Mills were in fact capital contributions was erroneous. Upon hearing the matter, the Tax Court of the United States affirmed the determination of the Commissioner of Internal Revenue and judgment was duly made and entered against the decedent, Harry J. Wolf, in the amount of \$43,287.42. Thereafter the decedent, Harry J. Wolf, paid the amount of said deficiency, together with interest, on the 31st day of December, 1949. Thereafter the decedent, Harry J. Wolf, prosecuted an appeal from the Tax Court's determination to the United States Court of Appeals for the Ninth Circuit, which Court duly entered its judgment affirming the determination of the Tax Court. Thereafter the decedent, Harry J. Wolf, petitioned the Supreme Court of the United States for a Writ of Certiorari to

review the judgment of the United States Court of Appeals and which Court denied said petitions.

XVI.

On or about December 30, 1949, the decedent, Harry J. Wolf, paid the deficiency as asserted as aforesaid and reduced to judgment by the proceedings as aforesaid, to Hugh H. Earle, the then Collector of Internal Revenue for the District of Oregon, additional tax in the sum of \$43,282.00, together with interest on said deficiency in the sum of \$15,040.50.

XVII.

By reason of the income and victory tax payments made on the original return of the decedent, Harry J. Wolf, and the payments made on account of the deficiencies asserted by the Commissioner of Internal Revenue, together with interest on said deficiencies, said taxpayer paid income and victory taxes, together with the interest on the deficiencies in the amount of \$102,938.06, for the taxable year 1943.

XVIII.

By virtue of the determination of the Commissioner of Internal Revenue, the judgment of the Tax Court of the United States, the affirmance of that judgment by the United States Court of Appeals and the denial of the petition for certiorari by the United States Supreme Court as aforesaid, it has been duly adjudicated that the merchandise delivered by Alaska Junk Company to Oregon Electric Steel Rolling Mill were not sales but were capi-

tal contributions; that it was erroneously carried on the books of Alaska Junk Company as accounts receivable and was erroneously included in the gross income of the partnership in making said returns and the income and victory taxes paid by the partners on their distributive shares therefrom erroneously paid; that said amounts should have in fact been excluded from the gross income of said Alaska Junk Company thus reducing the amount of the net income reportable by said Alaska Junk Company, and thus reducing the amount of income reportable by the decedent, Harry J. Wolf, on his individual income and victory tax return for the taxable year 1943.

XIX.

The difference in the amount of the income and victory tax of decedent, Harry J. Wolf, as reported on his original income and victory tax return, together with the deficiency and interest as hereinabove set forth, and the correct amount of income and victory tax for the taxable year 1943, after eliminating from gross income of Alaska Junk Company the merchandise delivered to Oregon Electric Steel Rolling Mill, is \$45,968.34.

XX.

On or about June 20, 1951, the decedent, Harry J. Wolf, filed with the Collector of Internal Revenue on Form 843 a claim for refund of the taxes and interest mentioned in the preceding paragraph, to-wit: \$45,968.34, together with interest as provided by law, a copy of which is attached hereto

and by this reference made a part hereof and marked Exhibit A.

XXI.

On or about August 1, 1951, the Commissioner of Internal Revenue notified the decedent, Harry J. Wolf, by registered mail that his claim for refund had been disallowed.

XXII.

Said sum of \$45,968.34 has not been repaid to the decedent, Harry J. Wolf, and/or the plaintiff herein, and the defendant now erroneously and illegally withholds from plaintiff the said sum of \$45,968.34, and the whole thereof, together with interest thereon at the rate of 6% per annum from December 31, 1949, as provided by law.

Wherefore, plaintiff demands judgment, upon the facts and law, against the defendant for the sum of \$45,968.34, together with interest from December 31, 1949, as provided by law.

/s/ JACOB, JONES & BROWN,
Attorneys for Plaintiff.

Of Counsel:

/s/ S. J. Bischoff

Duly Verified.

EXHIBIT A

CLAIM

To be filed with the Collector where assessment was made or tax paid.

The Collector will indicate in the block below the kind of claim filed, and fill in, where required, the certificate on the back of this form.

[x] Refund of Taxes Illegally, Erroneously, or Excessively Collected.

* * * * *

Name of taxpayer or purchaser of stamps. Estate of Harry J. Wolf, by Monte L. Wolf, Executor.

Business address: 900 S. W. First Avenue, Portland, Oregon.

1. District in which return (if any) was filed: Oregon.

2. Period (if for tax reported on annual basis, prepare separate form for each taxable year) from Jan. 1, 1942, to Dec. 31, 1943.

3. Character of assessment or tax: Income and victory taxes.

4. Amount of assessment, \$102,938.06; dates of payment 3/15/43 to 12/31/44 and 12/31/49.

* * * * *

6. Amount to be refunded plus interest as provided by law: \$45,912.53.

* * * * *

The claimant believes that this claim should be allowed for the following reasons: See the attached schedule and statements.

I declare under the penalties of perjury that this

Exhibit A—(Continued)

claim (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true and correct.

Dated June 19th, 1951.

/s/ Estate of Harry J. Wolf

/s/ By Monte L. Wolf, Executor

Estate of Harry J. Wolf, by Monte L. Wolf,
Executor

1942

INCOME

Dividends	\$.50	
Rent and Royalty		521.67	
Alaska Junk		64,030.86	\$ 64,553.03

DEDUCTIONS

Less $\frac{1}{4}$ Sales Alaska Junk Co. held by Tax Court to be Capital Contribution (\$243,975.86)	\$	60,993.96	
State Income Tax		4,125.98	65,119.94
Loss			\$ (566.89)
Donations	\$	1,073.04	

1943

INCOME

Dividends	\$.97	
Rents and Royalties		584.72	
Alaska Junk		66,513.92	
One-fourth Alaska Junk loss disallowed		50,587.65	\$117,687.26

DEDUCTIONS

Interest	\$	269.79	
State Income Tax		2,675.88	
Capital Loss		1,000.00	
Donations		1,381.09	

Exhibit A—(Continued)

One-Fourth Alaska Junk Sales Held by		
Tax Court to be Capital Contribution		
(\$103,365.76)	25,841.44	31,168.20
		<hr/>
		\$ 86,519.06
Less Personal Exemption		1,200.00
		<hr/>
		\$ 85,319.00
		<hr/>
Surtax	\$ 47,929.30	
Normal Tax	5,039.33	
Victory Tax	4,001.09	
	<hr/>	
		\$ 56,969.72
Tax paid on original return.....	\$ 44,615.56	
Additional tax paid 12/31/49.....	43,282.00	
Interest paid 12/31/49.....	15,040.50	
	<hr/>	
Total tax and interest.....		\$102,938.06
		<hr/>
Overpayment—Tax and Interest		\$ 45,968.34

Statement of Facts and Memorandum in Support of Claims for Refund of Sam Schnitzer, Rose Schnitzer, Estate of H. J. Wolf and Monte L. Wolf, Charlotte C. Cohon and Blossom M. Grayson Transferees of the Estate of Jennie Wolf for the Tax Years 1942 and 1943:

The claimants and/or their predecessors in interest were, in the tax years in question, members of the partnership known as "Alaska Junk Company".

In said tax years the partnership consisted of Sam Schnitzer, Rose Schnitzer, his wife, Harry J. Wolf and Jennie Wolf, his wife. Each owned a one-fourth interest in the partnership and received a

Exhibit A—(Continued)

one-fourth interest in the net earnings of the partnership. Jennie Wolf died April 8, 1945, and her interest in the partnership vested by virtue of her Will in her children, Monte L. Wolf, Charlotte C. Cohon and Blossom M. Grayson in equal shares.

Harry J. Wolf died on the 6th day of February, 1948, and his interest in the said partnership vested by virtue of his will in Monte L. Wolf, Charlotte C. Cohon and Blossom M. Grayson in equal shares.

The said partnership kept its books of account and reported its income and expenses in the tax years in question on the accrual basis.

The said partnership filed its income tax return for the tax year 1942 on or about March 15, 1943, and reported and filed its partnership information return on a calendar year basis. In said tax year it reported gross receipts from sales (on the accrual basis) of \$2,038,384.76. The net income of the partnership in said information return was computed upon that amount of gross sales, and the income tax returns of the individual partners were likewise computed upon the basis of that amount of gross sales.

Included in the said gross receipts of \$2,038,384.76 were sales made by the partnership to a corporation known as The Oregon Electric Steel Rolling Mills in the sum of \$243,975.86, all of which sales were accrued on the books of the partnership as of the end of the tax year 1942, were unpaid at that time, and were carried on the books of the partnership as accounts receivable.

Exhibit A—(Continued)

The net income of the partnership for the tax year 1942, as reported in said information return, which included the sales made to The Oregon Electric Steel Rolling Mills, was the sum of \$236,123.45. The said net partnership income was reported by the individual partners in their individual income tax returns as constructively received, in the following amounts:

Sam Schnitzer	\$ 64,030.86
Rose Schnitzer	54,030.87
Harry J. Wolf	64,030.86
Jennie Wolf	54,030.86
<hr/>	
Total	\$236,123.45

The individual partners filed their income tax returns for said tax year on or about March 15, 1943, reporting said amounts in their respective income tax returns in determining the net taxable income of each and each paid income tax on the full amount of the net income so reported.

The said partnership filed its income tax returns for the tax year 1943 on or about March 15, 1944, and reported and filed its partnership information return on a calendar year basis. In said tax year it reported gross receipts from sales (on the accrual basis) of \$1,463,363.19, the net income of the partnership in said information return was computed upon that amount of gross sales, and the income tax returns of the individual partners were likewise computed upon the basis of that amount of gross sales.

Exhibit A—(Continued)

Included in the said gross receipts of \$1,463,363.19 were sales made by the partnership to The Oregon Electric Steel Rolling Mills in the sum of \$103,365.76, all of which sales were accrued on the books of the partnership as of the end of the tax year 1943 and unpaid at that time, and the amount of said sales was carried on the books of the partnership as an account receivable.

That the net income of the partnership for the tax year 1943 as reported in said information return, which included the sales made to The Oregon Electric Steel Rolling Mills, was the sum of \$246,055.71. That the said net partnership income was reported by the individual partners of said Alaska Junk Company in their individual income tax returns as constructively received by said partners in 1943 in the following amounts:

Sam Schnitzer	\$ 66,513.92
Rose Schnitzer	56,513.93
Harry J. Wolf	66,513.93
Jennie Wolf	56,513.93

Total.....\$246,055.71

In computing the partnership net income for the tax year 1943 the partnership took as a deduction the sum of \$202,350.60, which included losses resulting from sales made by said partnership to The Oregon Electric Steel Rolling Mills in the sum of \$202,350.60, which amount had theretofore been carried on the books of the partnership as an account receivable, and which had been reported in the tax

Exhibit A—(Continued)

years 1942 and 1943 as income constructively received on the accrual basis, and included in the income for the said years by the individual partners as income constructively received and individual income and surtaxes were paid thereon.

On the 3rd day of March, 1947 the Commissioner of Internal Revenue determined and asserted income tax deficiencies against each of the four individual partners on the asserted ground that the merchandise sold by the partnership to The Oregon Electric Steel Rolling Mills, as well as advances made by the partnership to Oregon Electric and payments made by the partnership for the account of Oregon Electric, were in reality capital contributions by the partners to Oregon Electric and accordingly did not constitute sales, advances or payments for the account of Oregon Electric, and on said date of March 3rd, 1947, The Commissioner of Internal Revenue sent to the individual partners of the said partnership the 90-day notices of deficiencies imposed by reason thereof.

At the time the said deficiency letters were sent to the individual partners, the partner, Jennie Wolf, was dead; Mrs. Wolf left a Will devising one-third of her interest in the said partnership to each of her three children, Monte L. Wolf, Charlotte C. Cohon and Blossom M. Grayson. Said will was duly admitted to probate in the Probate Department of the Circuit Court of the State of Oregon for Multnomah County and the decedent's interest in the said partnership was thereafter dis-

Exhibit A—(Continued)

tributed to the said three legatees on the 1st day of April, 1946, and by virtue of said Will and the distribution the said three legatees became the owners of the decedent's partnership interest in the said partnership.

On June 2, 1947 petitions were filed with the Tax Court of the United States to review the determination of the Commissioner of Internal Revenue assessing said deficiencies by Sam Schnitzer, Harry J. Wolf and by Monte L. Wolf, Charlotte C. Cohon, Blossom M. Grayson as successors to the partnership interest of Jennie Wolf, deceased.

While said proceedings were pending before the Tax Court of the United States the death of the petitioner Harry J. Wolf occurred. He left a Will in which he devised his one-fourth interest in the Alaska Junk Company partnership to his three children, Monte L. Wolf, Charlotte C. Cohon and Blossom M. Grayson, in equal shares; his Will was duly admitted to probate in the Circuit Court of the State of Oregon for Multnomah County, Probate Department, and in said proceeding Monte L. Wolf was appointed executor of his Estate, letters testamentary were duly issued to him as executor, he duly qualified as such executor, and has ever since been and now is the duly appointed, qualified and acting executor of the estate of said Harry J. Wolf, deceased; thereafter Monte L. Wolf as executor of the Estate of Harry J. Wolf, deceased, was substituted as party petitioner in place and stead of the petitioner Harry J. Wolf in the said proceedings

Exhibit A—(Continued)

pending before the Tax Court of the United States.

Thereafter the said proceedings came on for trial in the Tax Court of the United States, and a judgment was duly made and entered therein adjudicating, among other things, that the sales of merchandise by said partnership of Alaska Junk Company to Oregon Electric Steel Rolling Mills in the tax years 1942 and 1943 did not constitute sales of merchandise and did not create any liabilities from Oregon Electric to the said partnership, but were, in reality, capital contributions by the partnership to Oregon Electric and losses sustained therefrom by the partnership in said tax years did not constitute deductible bad debt losses; based upon said determination, judgment was entered in the Tax Court of the United States on the 9th day of November, 1949 against each of the petitioners in said proceedings as follows:

Sam Schnitzer	\$ 43,287.42
Harry J. Wolf	43,282.00
Monte L. Wolf, Transferee Estate of Jennie Wolf, deceased	14,091.33
Charlotte C. Cohon, Transferee Estate of Jennie Wolf, deceased..	14,091.33
Blossom M. Grayson, Transferee Estate of Jennie Wolf, deceased	14,091.33

By reason of the fact the Commissioner of Internal Revenue determined Rose Schnitzer to be not a partner in Alaska Junk Company, no deficiency was asserted against her until October 17, 1949, on which date a formal notice was sent based

Exhibit A—(Continued)

upon the decision of the Tax Court of the United States. In said notice he asserted a deficiency of \$42,273.99, which said deficiency, together with interest in the sum of \$14,795.90, was paid on January 14, 1950.

Thereafter and on the 31st day of December, 1949 each of the said petitioners paid to the Collector of Internal Revenue for the District of Oregon the amounts of the deficiencies determined against them, as aforesaid, together with interest as set forth in the schedules attached hereto.

Thereafter the said petitioners prosecuted an appeal from the said judgments of the Tax Court of the United States to the United States Court of Appeals for the Ninth Circuit; that thereafter judgments were entered in said court affirming the judgments of the Tax Court of the United States in said proceedings.

Thereafter the petitioners filed with the Supreme Court of the United States their petitions for Writs of Certiorari to review the judgments of the United States Court of Appeals in said proceedings, which said petitions were denied.

By reason of the premises the said judgments of the Tax Court of the United States have become and are now final. The portion of the deficiencies in income tax determined and assessed against Monte L. Wolf, Charlotte C. Cohon and Blossom M. Grayson, as the successors to the partnership interest of Jennie Wolf, were paid by each of the said Monte L. Wolf, Charlotte C. Cohon and Blos-

Exhibit A—(Continued)

som M. Grayson individually as transferees of the Estate of Jennie Wolf, deceased.

The portion of the deficiencies determined and assessed as against the Estate of Harry J. Wolf, deceased, was paid by Monte L. Wolf as executor of said estate.

By virtue of the income tax payments originally made for the tax years 1942 and 1943 when said tax returns were filed, plus the payments subsequently made by virtue of the aforesaid determinations and judgment, the total amount of income tax and interest payments that were made for said tax years by each of the four partnership interests were as follows:

Sam Schnitzer	\$103,006.54
Rose Schnitzer	94,020.86
Estate of Jennie Wolf	93,915.17
Estate of Harry J. Wolf.....	102,938.06

By virtue of the said determinations of the Commissioner and the judgments affirming the same referred to above, it now appears that the partnership erroneously included in the information tax return of Alaska Junk Company for said tax years the sales made by the partnership to the Oregon Electric Steel Rolling Mills as constructive receipts of income, and the partners in their respective individual tax returns erroneously included in their returns for said tax years the income resulting from the treatment of the sales from the partnership to Oregon Electric Steel Rolling Mills as accrued income.

Exhibit A—(Continued)

upon the decision of the Tax Court of the United States. In said notice he asserted a deficiency of \$42,273.99, which said deficiency, together with interest in the sum of \$14,795.90, was paid on January 14, 1950.

Thereafter and on the 31st day of December, 1949 each of the said petitioners paid to the Collector of Internal Revenue for the District of Oregon the amounts of the deficiencies determined against them, as aforesaid, together with interest as set forth in the schedules attached hereto.

Thereafter the said petitioners prosecuted an appeal from the said judgments of the Tax Court of the United States to the United States Court of Appeals for the Ninth Circuit; that thereafter judgments were entered in said court affirming the judgments of the Tax Court of the United States in said proceedings.

Thereafter the petitioners filed with the Supreme Court of the United States their petitions for Writs of Certiorari to review the judgments of the United States Court of Appeals in said proceedings, which said petitions were denied.

By reason of the premises the said judgments of the Tax Court of the United States have become and are now final. The portion of the deficiencies in income tax determined and assessed against Monte L. Wolf, Charlotte C. Cohon and Blossom M. Grayson, as the successors to the partnership interest of Jennie Wolf, were paid by each of the said Monte L. Wolf, Charlotte C. Cohon and Blossom M. Grayson.

Exhibit A—(Continued)

som M. Grayson individually as transferees of the Estate of Jennie Wolf, deceased.

The portion of the deficiencies determined and assessed as against the Estate of Harry J. Wolf, deceased, was paid by Monte L. Wolf as executor of said estate.

By virtue of the income tax payments originally made for the tax years 1942 and 1943 when said tax returns were filed, plus the payments subsequently made by virtue of the aforesaid determinations and judgment, the total amount of income tax and interest payments that were made for said tax years by each of the four partnership interests were as follows:

Sam Schnitzer	\$103,006.54
Rose Schnitzer	94,020.86
Estate of Jennie Wolf	93,915.17
Estate of Harry J. Wolf.....	102,938.06

By virtue of the said determinations of the Commissioner and the judgments affirming the same referred to above, it now appears that the partnership erroneously included in the information tax return of Alaska Junk Company for said tax years the sales made by the partnership to the Oregon Electric Steel Rolling Mills as constructive receipts of income, and the partners in their respective individual tax returns erroneously included in their returns for said tax years the income resulting from the treatment of the sales from the partnership to Oregon Electric Steel Rolling Mills as accrued income.

Exhibit A—(Continued)

By reason of the erroneous inclusion of the said sales as income in said tax years the claimants have now recomputed the net income of the partnership and their own distributive shares thereof for the tax years in question by eliminating therefrom the sales made by the partnership to Oregon Electric Steel Rolling Mills and the bad debt deduction disallowed by the Commissioner of Internal Revenue and accrued by the partnership as income in said tax years, as more fully appears by the amended tax returns, copies of which are attached hereto, which amended returns were prepared in accordance with the determinations of the Commissioner of Internal Revenue and of the judgments of the Tax Court of the United States affirmed as aforesaid, and by reason of said recomputation of the tax liability for said tax years the true tax liability for said tax years of each of the individuals owning partnership interests in said Alaska Junk Company is as follows:

Sam Schnitzer	\$56,800.93
Rose Schnitzer	50,176.80
Estate of Harry J. Wolf	56,969.72
Estate of Jennie Wolf	50,176.82

The difference between the total amounts of income tax and interest payments paid by the partners and their successors in interest, the claimants herein, and the amount of the tax liability of each of the partners and their successors in interest as computed in accordance with the amended return submitted herewith are as follows:

Exhibit A—(Continued)

Sam Schnitzer	\$46,205.61
Rose Schnitzer	43,844.06
Estate of Harry Wolf	45,968.34
Monte L. Wolf, Transferee of Jennie Wolf, deceased	14,579.45
Charlotte C. Cohon, Transferee of Jennie Wolf, deceased	14,579.45
Blossom M. Grayson, Transferee of Jennie Wolf, deceased	14,579.45

In summary, these claims are predicated upon the facts that the partnership erroneously, as it now appears from the decisions of the Tax Court of the United States as affirmed, treated the sales to Oregon Electric Steel Rolling Mills as income from sales on its books and accrued the income therefrom, the individual partners were on account thereof required to and did report these sales as income constructively received by them and actually paid income and victory taxes thereon, although payment for said sales has never actually been received by the partnership and/or the individual partners, at the same time the Commissioner asserted, and it has now been judicially determined, that those sales were not sales but capital contributions, and the deduction taken as aforesaid by reason of the failure of Oregon Electric to pay said liabilities was disallowed, so that the claimants and their predecessors in interests paid income taxes on income which was never received actually or constructively.

EXHIBIT A (CONT.)

24

FORM 1065
Terry Department
al Revenue Service

UNITED STATES

Page 1

PARTNERSHIP RETURN OF INCOME 1942

(To be Filed Also by Syndicates, Pools, Joint Ventures, Etc.)

For Calendar Year 1942

or fiscal year beginning....., 1942, and ending....., 1943

(File this return not later than the 15th day of the 3d month following the close of the taxable year)

(PRINT PLAINLY NAME AND BUSINESS ADDRESS OF THE ORGANIZATION)

ALASKA JUNK CO.

(Name)

900 S. W. First Avenue

(Street and number)

Portland, Multnomah, Oregon

(Post office)

(County)

(State)

Business or Profession Machinery, Pipe & Scrap Iron

Do Not Use These Spaces

File Code

Serial No.

District

(Date Received)

GROSS INCOME

Gross receipts from business or profession..... \$ 1,794,408 90

Less cost of goods sold:

(a) Inventory at beginning of year.....	\$ 484,478 19	
(b) Merchandise bought for sale.....	1,001,686 90	
(c) Cost of inventory freight.....	76,987 90	
(d) Total of lines (a), (b), and (c).....	\$ 1,563,152 99	
(e) Less inventory at end of year.....	231,312 65	1,331,840 34

Gross profit (or loss) from business or profession (item 1 minus item 2)..... \$ 462,568 56

Income (or loss) from other partnerships, syndicates, pools, etc. (State separately name, address, and amount):

Alton & Coast Railroad Liquidators, Portland, Oregon..... 2,410 12

Interest on bank deposits, notes, etc.

Interest on corporation bonds, etc. (except interest to

be reported in item 7)..... \$

Interest on tax-free covenant bonds upon which a Federal

tax was paid at source..... \$

Interest on Government obligations, etc.:

(a) From line (h), Schedule A..... \$

(b) From line (i), Schedule A..... \$

Rents

Royalties

Net gain (or loss) from sale or exchange of property other than capital assets (from Schedule B)

Dividends

Other income (state nature of income):

Total income in items 3 to 13 (enter nontaxable income in Schedules A and C)..... \$ 464,978 68

DEDUCTIONS

Salaries and wages (do not include compensation for partners)..... \$ 333,240 92

Rent..... 13,637 58

Repairs

Interest on indebtedness (explain in Schedule F)..... 8,612 37

Taxes (explain in Schedule C)..... 17,228 07

Losses by fire, storm, shipwreck, or other casualty, or theft (submit schedule)

Bad debts (explain in Schedule D)..... 1,971 24

a) Depreciation (explain in Schedule E)..... 7,404 32

b) Amortization of emergency facilities (attach statement)

Depletion of mines, oil and gas wells, timber, etc. (submit schedule)

Other deductions authorized by law (explain in Schedule F)..... 90,736 59

Total deductions in items 15 to 24.....

Ordinary net income (item 14 minus item 25)..... \$ 472,831 09

Net short-term capital gain (or loss) (from line 1, column 4, Summary, Schedule H)..... \$

Net long-term capital gain (or loss) (from line 2, column 4, Summary, Schedule H)..... \$

Total of lines (e), (f), and (g), column 3 (enter as item 8 (a), page 1).

Interest on Treasury Notes issued on or after December 1, 1940, and obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof (enter amount of interest as item 8 (b), page 1) _____

Amount owned
of year

Interest received or accrued during the year (subject to normal tax and surtax)

Part II **Section B.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS.**
(See instruction 11)

[illegible]

Total net gain (or loss) (enter as item 11, page 1)

the family, fiduciary, or business relationship to you, if any, of purchaser of any of the above items:

of the above items were acquired by you other than by purchase, explain fully how acquired:

Schedule C.—TAXES. (See Instruction 19)

Nature	Amount	
ultnomah Cougty Taxes	\$ 17,228	07
Total (enter as item 19, page 1)	\$ 17,228	07

Schedule D.—BAD DEBTS. (See Instruction 21)

1. Taxable year	2. Net income reported	3. Sales on account	4. Bad debts charged off by organization if no reserve is carried on books	5. If organization carried a reserve—	
				5. Gross amount added to reserve	6. Amount charged against reserve
	\$ 137,520 73	\$ 1,525,059 74	\$ 11,340 05	\$	\$
	141,599 08	1,727,425 79	5,241 60		
	254,126 38	1,705,335 29	5,226 20		
	236,123 45	1,815,566 91	1,971 24		

NOTE.—Check whether deduction claimed represents worthless debts charged off ☐, or is an addition to a reserve ☐.

Schedule E.—DEPRECIATION. (See Instruction 22 (a))

1. Land of property (if buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
		\$ _____	\$ _____	\$ _____	\$ _____			\$ _____
			ATTACHED					
Total (enter as item 22(a), page 1)								\$ _____

Schedule F.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 18 AND 24

1. Item No.	2. Explanation	3. Amount	1. Item No. (continued)	2. Explanation (continued)	3. Amount (continued)
	Interest paid on money borrowed - mostly to First National Bank, Portland, Oregon	\$ 8,612 37		Other deductions	\$90,736 59

Schedule I.—CONTRIBUTIONS OR GIFTS PAID. (See Instruction 29)

Name and address of organization	Amount
Portland Community Chest - Portland, Oregon	650 00
Oregon Jewish Welfare Fund - Portland, Oregon	1,500 00
United Service Organization - Portland, Oregon	50 00
Pantile Paralysis Fund - Portland, Oregon	100 00
George White Service Center, Portland, Oregon	50 00
c. Bond Drive - Portland, Oregon	200 00
miscellaneous	342 16
Total (enter in column 10, Schedule D)	\$ 2,892 16

EXHIBIT A (CONT.)

EXHIBIT A (CONT.)

FORM 1065
Treasury Department
Internal Revenue Service

UNITED STATES

Page 1

PARTNERSHIP RETURN OF INCOME 1943

(To be Filed Also by Syndicates, Pools, Joint Ventures, Etc.)

For Calendar Year 1943

or fiscal year beginning....., 1943, and ending....., 1944

(File this return not later than the 15th day of the 3d month following the close of the taxable year)

(PRINT PLAINLY NAME AND BUSINESS ADDRESS OF THE ORGANIZATION)

ALASKA JUNK CO.

(Name)

900 S. W. First Avenue

(Street and number)

Portland 4, Oregon

(City or town)

(State)

Business or Profession Machinery, Pipe & Scrap Iron

Do Not Use These Spaces

File Code

Serial No.

District

(Date Received)

GROSS INCOME

Gross receipts from business or profession.....			\$ 1,359,997	43
Less cost of goods sold:				
(a) Inventory at beginning of year.....	\$ 231,312	65		
(b) Merchandise bought for sale.....	582,811	29		
(c) Cost of labor, supplies, etc.....	45,857	93		
(d) Total of lines (a), (b), and (c).....	\$ 859,981	87		
(e) Less inventory at end of year.....	338,319	68	521,662	19
Gross profit (or loss) from business or profession (item 1 minus item 2).....			\$ 838,335	24
Income (or loss) from other partnerships, syndicates, pools, etc. (State separately name, address, and amount):				
Interest on bank deposits, notes, etc.....			4,779	09
Interest on corporation bonds, etc. (except interest to be reported in item 7).....				
Less amortizable bond premium.....				
Interest on tax-free covenant bonds upon which a Federal tax was paid at source.....				
Interest on Government obligations, etc.:				
(a) From line (h), Schedule A.....				
(b) From line (i), Schedule A.....				
Rents.....				
Royalties.....				
Net gain (or loss) from sale or exchange of property other than capital assets (from Schedule B).....			3	22
Dividends.....				
Other income (state nature of income):				

Total income in items 3 to 13 (enter nontaxable income in Schedules A and G).....

\$ 843,117 55

DEDUCTIONS

Salaries and wages (do not include compensation for partners).....			\$ 342,277	29
Rent.....			11,887	08
Repairs.....			5,252	94
Interest on indebtedness (explain in Schedule F).....			20,456	56
Taxes (explain in Schedule C).....			14,983	36
Losses by fire, storm, shipwreck, or other casualty, or theft (submit schedule).....				
Bad debts (explain in Schedule D).....			3,658	32
(a) Depreciation (explain in Schedule E).....			6,596	33
(b) Amortization of emergency facilities (attach statement).....				
Depletion of mines, oil and gas wells, timber, etc. (submit schedule).....				
Other deductions authorized by law (explain in Schedule F).....			92,965	12
Total deductions in items 15 to 24.....			498,077	00
Ordinary net income (item 14 minus item 25).....			\$ 345,040	55
Net short-term capital gain (or loss) (from line 1, column 4, Summary, Schedule H).....				
Net long-term capital gain (or loss) (from line 2, column 4, Summary, Schedule H).....				

Schedule A.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction 8)

Page 2

1. Obligations or securities	2. Amount owned at end of year	3. Interest (and dividends subject to surtax only) received or accrued during the year
Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	\$	\$
Obligations issued prior to March 1, 1941, under Federal Farm Loan Act, or under such Act as amended		
Obligations of United States issued on or before September 1, 1917		
Treasury Notes issued prior to December 1, 1940, Treasury Bills and Treasury Certificates of Indebtedness issued prior to March 1, 1941		
United States Savings Bonds and Treasury Bonds issued prior to March 1, 1941		
Obligations of instrumentalities of the United States (other than obligations to be reported in (b) above) issued prior to March 1, 1941		
Dividends on share accounts in Federal savings and loan associations in case of shares issued prior to March 28, 1942	XXXXXX	
Total of lines (c), (f), and (g), column 3 (enter as item 8 (a), page 1)		\$

	Amount owned at end of year	Interest received or accrued during the year (subject to normal tax and surtax)
Treasury Notes issued on or after December 1, 1940, and obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof (enter amount of interest as item 8 (b), page 1)	\$	\$

Schedule B.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS. (See Instruction 11)

1. Kind of property	2. Date acquired	3. Gross sales price (contract price)	4. Cost or other basis	5. Expense of sale and cost of improvements subsequent to acquisition or March 1, 1913	6. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (furnish details)	7. Gain or loss (column 3 plus column 6 minus the sum of columns 4 and 5)
Office fixtures	5/35	\$ 25.00	\$ 101.37		\$ 82.81	\$ 6.14
Total net gain (or loss) (enter as item 11, page 1)						\$ 3.22

the family, fiduciary, or business relationship to you, if any, of purchaser of any of the above items: None

any of the above items were acquired by you other than by purchase, explain fully how acquired:

Schedule C.—TAXES. (See Instruction 19)

Nature	Amount
Multnomah County, Property Taxes	\$ 13,931.88
Clatsop County, Property Taxes	993.28
Washington County, Property Taxes	58.20
Total (enter as item 19, page 1)	\$ 14,983.36

Schedule D.—BAD DEBTS. (See Instruction 21)

1. Taxable year	2. Net income reported	3. Sales on account	4. Bad debts of organization if no reserve is carried on books	If organization carried a reserve—	
				5. Gross amount added to reserve	6. Amount charged against reserve
	\$ 141,599.08	\$ 727,425.79	\$ 5,241.60		
	254,126.38	1,705,335.29	5,226.20		
	236,123.45	1,815,566.91	1,971.24		
	246,055.71	1,208,709.91	206,008.92		

NOTE—Check whether deduction claimed represents debts which have become worthless ☒ or is an addition to a reserve ☐.

Schedule I.—CONTRIBUTIONS OR GIFTS PAID. (See Instruction 29)

Name and address of organization	Amount
Oregon Jewish Welfare	\$ 2,000.00
United War Chest	1,000.00
American Red Cross	250.00
Congregation Shalom Torah	180.00
Infantile Paralysis Fund	100.00
Mizrachi Rehabilitation Fund	50.00
Miscellaneous	344.33
Total (enter in column 10, Schedule J)	\$ 3,924.33

EXHIBIT A (CONT.)

Schedule J.—PARTNERS' SHARES OF INCOME AND CREDITS. (See Instruction 29)

Page 4

1. Name and address of each partner (Designate nonresident alien) Where return of partner or member is filed in another collection district, specify district If the full time of any partner was not devoted to the business, the percentage of time devoted must be stated	2. Ordinary income less interest, taxes, etc. (From Schedule I, minus page 1, minus page 1)	3. Net short-term gain (or loss) from sale or exchange of capital assets (From Schedule H Summary, line 1, column 4)	4. Net long-term gain (or loss) from sale or exchange of capital assets (From Schedule H Summary, line 2, column 4)
Schnitzer, 1011 S.W. Vista, Portland, Ore.	\$ 91,260	13	\$
Mrs. M. Schnitzer, 1011 S.W. Vista, Portland	\$ 91,260	14	\$
H. J. Wolf, 3111 S.E. Lamber, Portland,	\$ 91,260	14	\$
Mrs. J. Wolf, 3111 S.E. Lambert, Portland, Ore.	\$ 91,260	14	\$
Totals	\$ 345,040	55	\$

CONTINUATION OF SCHEDULE J

5. Use of partner's share of net income	Partially tax-exempt								9. Earned income	10. Charitable contributions (from Schedule I)	11. Federal income tax paid at source (2 percent of gross amount in item 7, page 1)	12. Income and profits taxes paid to a foreign country or United States possession				
	6. Wholly tax-exempt obligations (lines (a), (b), (c), and (d) of Schedule A)				7. United States Savings Bonds and Treasury Bonds (line (e), Schedule A)								8. Obligations of certain instrumentalities of the United States (line (f), Schedule A)			
	a. Principal		b. Interest		a. Principal		b. Interest less amortizable bond premium						a. Principal		b. Interest less amortizable bond premium	
a.	\$		\$		\$		\$		\$		\$ 981	08	\$		\$	
b.											\$ 981	08				
c.											\$ 981	08				
d.											\$ 981	09				
Totals	\$		\$		\$		\$		\$		\$ 924	33	\$		\$	

QUESTIONS

Date of organization 1911
 Nature of organization (partnership, syndicate, pool, joint venture, etc.) Partnership
 Was a return filed for preceding year? Yes If so, to which collector's office was it sent? Portland, Oregon
 Check whether this return was prepared on the cash ☐ or accrual ☒ basis.
 State whether inventories at the beginning and end of the taxable year were valued at (a) cost, or (b) cost or market, whichever is lower.
 If any other basis is used, attach statement describing basis fully, state why used and the date inventory was last reconciled with stock.
 Did the organization at any time during its taxable year have in its employ more than eight individuals? (Answer "Yes" or "No") Yes

If answer is "Yes," has the organization in this return taken a deduction for any amount of wages or salaries representing an increase or decrease in rate during the taxable year? (Answer "Yes" or "No") Yes
 If answer to second question is "Yes," attach a statement explaining all such increases or decreases. If any of such increases or decreases required the prior approval of the National War Labor Board or the Commissioner of Internal Revenue as stated in instruction 15, attach also a copy of the authorization for each of such increases or decreases.
 7. Did the organization at any time during the taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company, as defined in section 501 of the Internal Revenue Code? (Answer "Yes" or "No") No
 If answer is "Yes," attach schedule required by Instruction I.
 8. Was return of information on Forms 1096 and 1099, or Forms V-2 and W-2, filed for the calendar year 1943? (See Instruction H) Yes

AFFIDAVIT (See Instruction D)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the accounting period stated, pursuant to the Internal Revenue Code and the regulations issued under authority thereof.

Signature of person (other than partner or member) preparing return (Date)
 (Name of firm or employer, if any)
 Subscribed and sworn to before me this _____ day of _____, 194_____
 (Signature of officer administering oath) (Title)

Signature of partner or member (Date)
 (Address of partner or member)
 Subscribed and sworn to before me this _____ day of _____, 194_____
 (Signature of officer administering oath) (Title)

U. S. GOVERNMENT PRINTING OFFICE 16-35062-1

EXHIBIT A (CONT.)

[Title of District Court and Cause.]

MOTION TO CONSOLIDATE

The defendant moves the Court to consolidate these actions for hearing because the actions all grow out of a consolidated proceeding before the Tax Court of the United States in the case of Sam Schnitzer, et al. vs. Commissioner, 13 T. C. 43, and the decision of that Court in that proceeding. Accordingly, a decision in the case of one of the plaintiffs' actions will be binding with respect to each of the other plaintiffs.

October, 1953.

/s/ ROBERT L. DRESSLER,
Asst. United States Attorney

Acknowledgment of Service attached.

[Endorsed]: Filed October 19, 1953.

[Title of District Court and Cause.]

DEFENDANT'S MOTION TO DISMISS COMPLAINT

The defendant moves the Court to dismiss this action under Rule 12(b) of the Federal Rules of Civil Procedure, because the Court lacks jurisdiction of this action, in that it affirmatively appears from the face of the complaint that the Tax Court of the United States made and entered its decision

in a proceeding instituted by the decedent, Harry J. Wolf, whose executor is the plaintiff in the present action, wherein that Court determined there was a deficiency in income tax due from the decedent for the taxable year 1943; that thereafter the decedent prosecuted an appeal from that Court's determination to the United States Court of Appeals for the Ninth Circuit which affirmed the judgment of the Tax Court; and that thereafter the Supreme Court of the United States denied decedent's petition for a writ of certiorari to review the judgment of the United States Court of Appeals. Therefore, the suit is barred by the provisions of Section 322(c) of the Internal Revenue Code, because the decision of the Tax Court has become final within the purview of Section 1140(b)(2) of that Code, and this Court lacks jurisdiction to review that decision under Section 1141 thereof.

The defendant also moves the Court to extend its time to answer the complaint until the decision on this motion.

/s/ ROBERT L. DRESSLER,
Asst. United States Attorney

Acknowledgment of Service attached.

[Endorsed]: Filed October 19, 1953.

[Title of District Court and Cause.]

ORDER

It appearing to the Court that a motion has been filed by the United States of America asking for an order of this Court to consolidate these actions for hearing and determination; and it further appearing that good cause exists therefor; it is hereby

Ordered that the above-entitled actions be and they are hereby consolidated for hearing and determination.

Dated this 19th day of October, 1953.

/s/ CLAUDE McCOLLOCH,
District Judge

[Endorsed]: Filed October 20, 1953.

[Title of District Court and Cause.]

MINUTES OF THE COURT

November 2, 1953

Plaintiff appearing by Mr. S. J. Bischoff, of counsel, and the defendant by Mr. Leland T. Ather-ton, Special Assistant to the Attorney General. Whereupon, this cause comes on to be heard upon the motion of the defendant to dismiss the complaint herein, and the Court having heard the arguments of counsel, reserves its decision.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant United States of America, by Henry L. Hess, United States Attorney for the District of Oregon, and Robert L. Dressler, Assistant United States Attorney, and in answer to plaintiff's complaint, admits, denies and alleges as follows:

I.

For answer to the allegations contained in Paragraph I of the complaint, defendant denies that this Court has jurisdiction of this action because defendant is reliably informed and therefore believes that the Estate of Harry J. Wolf, deceased, by Monte L. Wolf, Executor, who is the plaintiff in the present action, filed a petition with the Tax Court of the United States for the redetermination of a deficiency in income and victory tax assessed against decedent's estate for the taxable year 1943, and that the Tax Court, on November 9, 1949, made and entered its decision that there was a deficiency in income and victory tax due from said decedent's estate for the calendar year 1943 in the amount of \$43,282.00, which decision has become final; and this action is therefore barred by the provisions of Section 322 (c) of the Internal Revenue Code, and this Court lacks jurisdiction to review the Tax Court's decision, in accordance with the provisions of Section 1141 of the Internal Revenue Code.

II.

Admits the allegations contained in Paragraphs II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV and XVI, except that in respect to the allegations contained in Paragraph X the correct amount should be \$1,463,363.19 instead of \$1,463,365.76, and in respect to the allegations contained in Paragraph XV, the defendant is reliably informed and therefore believes that the petition mentioned therein was filed on May 26, 1947 instead of on June 2, 1947, and that the Tax Court's decision or judgment entered against the decedent, Harry J. Wolf, was in the amount of \$43,282.00 instead of \$43,287.42, as alleged in Paragraph XV of the complaint.

III.

Denies the allegations contained in Paragraph XVII of the complaint.

IV.

Admits the allegations contained in Paragraph XVIII of the complaint.

V.

Denies the allegations contained in Paragraph XIX of the complaint.

VI.

Admits the allegations contained in Paragraphs XX and XXI of the complaint.

VII.

Denies the allegations contained in Paragraph XXII of the complaint, except that the defendant

admits that the sum of \$45,968.34 referred to therein has not been repaid to the decedent, Harry J. Wolf, or to the plaintiff herein.

VIII.

For a first, separate and complete defense, defendant avers that this Court lacks jurisdiction of the subject matter of this action under the provisions of Internal Revenue Code, Section 1141(a); and that this suit is barred by the provisions of Internal Revenue Code, Section 322(c), because

(1) the Estate of Harry J. Wolf, deceased, by Monte L. Wolf, Executor of this estate, the plaintiff in this cause, timely filed a petition with the Tax Court of the United States in a proceeding bearing Docket No. 14209, for the redetermination of the deficiency in income and victory tax for the calendar year 1943, asserted against decedent's estate by the Commissioner of Internal Revenue, which that Court affirmed in its opinion promulgated July 14, 1949; and

(2) pursuant to that opinion the respondent filed a computation on October 6, 1949, and the petitioner (Estate of Harry J. Wolf, deceased, by Monte L. Wolf, Executor, the plaintiff herein) on November 7, 1949, filed an acquiescence in the computation filed by the respondent, whereupon the Tax Court on November 9, 1949, entered its decision wherein it ordered and decided that there was a deficiency in income and victory tax due from decedent's estate for the calendar year 1943 in the

amount of \$43,282.00, which has not been reversed on modified, and has become final and satisfied.

IX.

For a second, separate and complete defense, defendant further avers that the complaint fails to state a claim upon which relief can be granted because defendant is reliably informed and therefore believes that in a proceeding heretofore had in the Tax Court of the United States, in which the Estate of Harry J. Wolf, deceased, was the petitioner, and the Commissioner of Internal Revenue was respondent, bearing Docket No. 14209, it was, among other things, alleged in the petition that the Commissioner's determination that certain accounts receivable of Oregon Electric Steel Rolling Mills for merchandise delivered to it by Alaska Junk Company were capital contributions, was erroneous; and that, upon hearing the matter, the Tax Court affirmed the Commissioner's determination, and duly entered its decision that there was due from decedent's estate a deficiency in income and victory tax for the calendar year 1943 in the amount of \$43,282.00, which was paid by the estate, that the Estate prosecuted an appeal from the Tax Court's decision to the United States Court of Appeals for the Ninth Circuit which duly affirmed the Tax Court's decision; and the United States Supreme Court thereafter denied the estate's petition for a writ of certiorari; and the Tax Court's decision stands unreversed and unmodified, and avers that the matters and things above set forth, which

were determined, adjudged and decreed in that decision were and are res judicata between the plaintiff and the defendant, in this cause, under the provisions of Internal Revenue Code, Section 3772(d).

X.

For a third, separate and complete defense, defendant further avers, upon information and belief, that the Estate of Harry J. Wolf, deceased, by Monte L. Wolf, Executor, the plaintiff herein, on November 7, 1949, filed with Tax Court of the United States an acquiescence in the computation filed on October 6, 1949 by the respondent with that Court showing a deficiency in income and victory tax for the calendar year 1943 in the amount of \$43,282.00, pursuant to the opinion of that Court promulgated on July 14, 1949, in the proceeding bearing Docket No. 14209, instituted by decedent's estate for the redetermination of the deficiency in income and victory tax for that calendar year, asserted by the Commissioner of Internal Revenue against said estate, and that, accordingly, on November 9, 1949, the Tax Court duly entered its decision in that proceeding, wherein it was ordered and decided that there was a deficiency in income and victory tax due from decedent's estate for the calendar year 1943 in the amount of \$43,282.00; and defendant further avers upon information and belief, that said decision of the Tax Court has not been reversed or modified, and has become final and satisfied, wherefore defendant avers that said decision or judgment of the Tax Court is a bar to this

action and conclusive not only as to matters actually presented but as to every ground of recovery that might have been presented; and that plaintiff is estopped by that decision and by the estate's acquiescence in the computation of the amount of the tax deficiency so ordered and decided by the Tax Court, from any recovery herein.

Wherefore, defendant prays that the complaint herein be dismissed and that judgment be entered in its favor and against the plaintiff, together with costs and disbursements of this action.

HENRY L. HESS,

U. S. Attorney for the District of
Oregon

/s/ ROBERT L. DRESSLER,

Asst. United States Attorney

Certificate of Service attached

[Endorsed]: Filed Dec. 2, 1953.

[Title of District Court and Cause.]

STIPULATION FOR THE ENTRY OF AN
ORDER CONSOLIDATING THE ABOVE
ENTITLED ACTIONS FOR TRIAL

It is hereby stipulated by and between the parties hereto, by their respective Counsel, that all of the above entitled actions be consolidated for trial for the reason that the basic issues of law and fact in the above entitled actions are the same and the

right of the plaintiffs in said actions to recover will depend upon the determination of the same basic issues of law and fact.

It is further stipulated that all exhibits that may be offered and/or admitted in evidence upon the consolidated trial of said actions, shall be deemed to have been offered and admitted in each of said cases and shall be deemed a part of the record in each of the said cases without the necessity of filing copies of said exhibits in all of said cases.

It is further stipulated, subject to the approval of the Court, that an Order may be entered upon this stipulation without further notice.

Dated: January 24, 1955.

/s/ S. J. BISCHOFF,
Attorney for Plaintiffs

/s/ C. E. LUCKEY,
Attorney for Defendant

[Endorsed]: Filed January 24, 1955.

[Title of District Court and Cause.]

ORDER CONSOLIDATING THE ABOVE
CASES FOR TRIAL

Upon the stipulation of the parties filed herein, it is

Ordered, that the above entitled actions be, and the same hereby are, consolidated for trial; and it is further

Ordered, that all exhibits offered and/or admitted

in evidence upon consolidated trial of said actions, shall be deemed to have been offered and admitted in each of said actions and shall be deemed a part of the record in each of said actions without the necessity of filing copies of such exhibits in each of said cases.

Dated: February 28, 1955.

/s/ GUS J. SOLOMON,
Judge

[Endorsed]: Filed February 28, 1955.

[Title of District Court and Cause.]

PRE-TRIAL ORDER

At this time the above entitled cause came on for pre-trial before the undersigned Judge of the above entitled Court. Plaintiff appeared herein by S. J. Bischoff, his Attorney. Defendant appeared herein by and through C. E. Luckey and as its Attorney.

The following are the agreed facts:

I.

During the calendar years 1942 and 1943, and until his death on February 6, 1948, Harry J. Wolf was a resident of the County of Multnomah, State of Oregon, and was then and until his death a citizen of the United States of America.

II.

Plaintiff herein is the duly qualified and acting Executor of the Estate of Harry J. Wolf, de-

ceased, to whom letters testamentary were granted by the Circuit Court (Probate Department) for the County of Multnomah, State of Oregon, on February 16, 1948.

III.

At all times from September 1, 1947, to and including October 30, 1952, Hugh H. Earle was the duly commissioned, qualified and acting United States Collector of Internal Revenue for the District of Oregon, and the said Hugh H. Earle is no longer in office.

IV.

At all times from July 17, 1933 to and including August 31, 1947, James W. Maloney was the duly commissioned, qualified and acting United States Collector of Internal Revenue for the District of Oregon, and the said James W. Maloney is no longer in office.

V.

During all times mentioned herein the decedent, Harry J. Wolf, kept his personal books and made and filed his income and victory tax returns on the cash receipts and disbursements and calendar year basis.

VI.

That during all times during the taxable years 1942 and 1943, the decedent, Harry J. Wolf, was a member of a partnership known as Alaska Junk Company. Said partnership was comprised of the decedent, Harry J. Wolf, Rose Schnitzer, Sam Schnitzer and Jennie Wolf. Said partnership during all times mentioned herein, filed its partnership

income tax information returns on a calendar year and accrual basis.

VII.

For the calendar year 1942 Alaska Junk Company reported gross sales in the amount of \$2,038,-384.76 on its partnership income tax information return filed on or about March 15, 1943. Included in said purported gross sales were certain items of merchandise delivered to a corporation known as "Oregon Electric Steel Rolling Mills" in the sum of \$243,975.86, the amount of said items being carried on the books of said Alaska Junk Company as accounts receivable.

VIII.

The net income as reported on the information tax return of Alaska Junk Company for 1942 was in the amount of \$236,123.45, of which amount the decedent Harry J. Wolf reported on his individual income and victory tax return the sum of \$64,-030.86 said tax return being filed on or about March 15, 1943, and said Harry J. Wolf paid said taxes to said James W. Maloney, the then Collector of Internal Revenue for the District of Oregon.

IX.

For the calendar year 1943, Alaska Junk Company reported gross sales in the amount of \$1,463,-363.19 on its partnership income tax information return filed on or about March 15, 1944. Included in said purported gross sales were certain items of merchandise delivered to a corporation known as Oregon Electric Steel Rolling Mills in the sum of

\$103,365.76, the amount of said items being carried on the books of said Alaska Junk Company as accounts receivable.

X.

The net income as reported on the information tax return of Alaska Junk Company for the calendar year 1943 was in the amount of \$246,055.71, of which the decedent, Harry J. Wolf, reported on his individual income and victory tax return the sum of \$66,513.93 said tax return being filed on or about March 15, 1944, and said Harry J. Wolf paid said taxes on or before said date, to said James W. Maloney, the then Collector of Internal Revenue for the District of Oregon.

XI.

In computing the net income of Alaska Junk Company for the calendar year 1943, a loss was claimed on its income tax information return of \$202,350.60 for bad debts on account of the aforementioned merchandise delivered to Oregon Electric Steel Rolling Mills, the amount of which said items had theretofore been carried on the books of Alaska Junk Company as accounts receivable.

XII.

On or about March 3, 1947, the Commissioner of Internal Revenue determined that the aforementioned loss on account of merchandise delivered to Oregon Electric Steel Rolling Mills was in fact a capital contribution to said corporation and was not a proper bad debt deduction.

XIII.

On or about March 3, 1947, the Commissioner of Internal Revenue determined a deficiency in income and victory tax for the calendar year 1943 against plaintiff herein, Executor of the Estate of Harry J. Wolf, deceased, by reason of the disallowance of the said bad debt deduction that had been taken on the information tax return of Alaska Junk Company.

XIV.

On June 2, 1947, the plaintiff, Monte L. Wolf, Executor of the Estate of Harry J. Wolf, filed his petition with The Tax Court of the United States in Docket No. 14209 contending that the determination of the Commissioner of Internal Revenue, to the effect that said accounts receivable of the Oregon Electric Steel Rolling Mills were in fact capital contributions, was erroneous. Upon hearing the matter, the Tax Court of the United States determined the issues in favor of the Commissioner of Internal Revenue and promulgated its finding of fact and opinion on July 14, 1949.

The Court withheld entry of its decision, pursuant to Rule 50 of its Rules of Practice, for the purpose of permitting the parties to submit computations of the proper tax liability pursuant to the Court's opinion. The Commissioner filed his computation on October 6, 1949, showing a total liability of \$43,282.00 due and owing by Harry J. Wolf. On November 7, 1949, the plaintiff, Monte L. Wolf, Executor of the Estate of Harry J. Wolf, deceased, filed his acquiescence in the computation

submitted by the Commissioner. Thereafter, on November 9, 1949, the Court entered its final order and decision determining a deficiency on the part of the plaintiff, Monte L. Wolf, Executor of the Estate of Harry J. Wolf, deceased, in income and victory tax for the calendar year 1943, for \$43,282.00 by reason of the said determination.

Thereafter, on January 4, 1950, the plaintiff, Monte L. Wolf, Executor of the Estate of Harry J. Wolf, prosecuted an appeal from the decision of The Tax Court of the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit rendered a per curiam opinion under date of July 24, 1950, affirming the decision of the Tax Court. On October 30, 1950, the plaintiff, Monte L. Wolf, Executor of the Estate of Harry J. Wolf, petitioned the Supreme Court of the United States for a writ of certiorari to review the judgment of the Court of Appeals. The Supreme Court denied certiorari on January 2, 1951 (340 U. S. 911).

The parties stipulate that the findings of fact and the opinion of the Tax Court and the per curiam opinion and judgment of the Court of Appeals for the Ninth Circuit are to be considered as part of the evidence and record before this Court; that said findings of fact and opinions are reported in the report of the Tax Court proceedings entitled *Sam Schnitzer, et al vs. Commissioner of Internal Revenue* at 13 T.C. 43, and in the report of the Court of Appeals proceeding of the same name at 183 F.2d, 70; and that said reports are hereby incorporated and made a part of this stipulation.

XV.

On December 30, 1949, plaintiff, Monte L. Wolf, Executor of the Estate of Harry J. Wolf, deceased, paid the deficiency asserted as aforesaid and determined by the said judgment, to Hugh H. Earle, the then Collector of Internal Revenue for the District of Oregon, the amount so paid by plaintiff being \$43,282.00, together with interest on said deficiency in the sum of \$15,040.05, total \$58,322.05.

XVI.

By reason of the income and victory tax payments made on the original return of Harry Wolf and the payments made on account of the deficiencies determined by the Commissioner of Internal Revenue and affirmed by The Tax Court of the United States as aforesaid, together with the interest on said deficiencies, the said taxpayer paid income and victory taxes, together with the interest on the deficiencies, in the amount of \$102,938.06 for the taxable year 1943.

XVII.

By virtue of the determination of the Commissioner of Internal Revenue, the decision of the Tax Court of the United States, the affirmance of that decision by the Court of Appeals for the Ninth Circuit and the denial of the petition for certiorari by the United States Supreme Court, as aforesaid, it has been adjudicated in effect that the merchandise sold and delivered by Alaska Junk Company

to Oregon Electric Steel Rolling Mills were not sales but capital contributions.

As a result of said adjudication, it follows that the "sales" to Oregon Electric Steel Rolling Mills were erroneously carried on the books of the Alaska Junk Company as accounts receivable; they were erroneously included in the gross income of the partnership for 1942 and 1943; the income and victory taxes paid by the partners including Harry J. Wolf on their distributive shares therefrom under the original returns, were erroneously paid; and the amounts of such "sales" should have been excluded from the gross income of Alaska Junk Company, thus reducing the amount of the net income reportable by said Alaska Junk Company, and thus reducing the amount of income reportable by the deceased, Harry J. Wolf, on his individual income and victory tax return for the taxable year 1943.

XVIII.

On or about June 21, 1951, Monte L. Wolf, Executor of the Estate of Harry J. Wolf, deceased, filed with the Collector of Internal Revenue for the District of Oregon, on Form 843, a claim for refund of the taxes and interest in the sum of \$45,912.53, together with interest thereon as provided by law, a copy of which claim is attached to the complaint herein. It is stipulated that the copy of the claim attached to the complaint herein is a true and correct copy of the claim filed as aforesaid and may be marked and admitted as "Plaintiff's Pre-Trial Exhibit No. 1".

XIX.

On or about August 1, 1951, the Commissioner of Internal Revenue notified Monte L. Wolf, Executor of the Estate of Harry J. Wolf, deceased, by registered mail, that his said claim for refund had been disallowed.

XX.

That the said sum of \$45,912.53 has not been repaid to Harry J. Wolf or the plaintiff herein.

XXI.

In its returns for the years 1942 and 1943, the partnership, Alaska Junk Company, reported sales, costs of sales, gross profits, other incomes, total incomes, deductions and net incomes as follows:

	1942	1943
Sales.....	\$ 2,038,384.76	\$ 1,463,363.19
Cost of Sales.....	1,331,840.34	521,662.19
Gross profits.....	\$ 706,544.42	\$ 941,701.00
Other income.....	2,410.12	4,782.31
Total Income.....	\$ 708,954.54	\$ 946,483.31
Deductions.....	(a) 472,831.09	(a) 700,427.60
Net income.....	\$ 236,123.45	\$ 246,055.71

(a) Total deductions claimed for 1942 and 1943 included bad debts in the respective amounts of \$1,971.24 and \$206,008.92.

XXII.

In computing the amount of the refund claimed by the plaintiff, as set forth in the claim referred to in paragraph XVIII, the plaintiff eliminated the merchandise sold and delivered to Oregon Elec-

tric Steel Rolling Mills in the amount of \$243,975.86 and \$103,365.76 from the gross sales reported in the original returns of the partnership, as aforesaid, thus computing the refund on the basis of gross sales in the amount of \$1,794,408.90 and \$1,359,997.43 for the years 1942 and 1943, respectively.

XXIII.

In computing the amount of refund claimed by plaintiff, as set forth in the claim referred to in paragraph XVIII, the plaintiff used the same cost of sales reported in the original returns of the partnership, that is, \$1,331,840.34 and \$521,662.19 for the years 1942 and 1943, respectively. The plaintiff did not eliminate the cost of the merchandise sold and delivered to Oregon Electric Steel Rolling Mills, that is, plaintiff did not reduce the cost of sales as reported in the original returns of the partnership by the actual cost of the merchandise sold and delivered to Oregon Electric Steel Rolling Mills.

XXIV.

The parties stipulate that the merchandise sold and delivered to Oregon Electric Steel Rolling Mills for the years 1942 and 1943, the amounts of which have been excluded from gross income in computing the refund claimed by the plaintiff, had a cost of \$159,389.43 and \$36,849.89, respectively.

XXV.

The difference in the amount of income and victory tax of the deceased, Harry J. Wolf, as re-

ported on his original income and victory tax return for 1943, together with the deficiency and interest paid, as aforesaid, and the amount of income and victory tax for the taxable year 1943 after eliminating from gross sales of the partnership (Alaska Junk Company) the merchandise sold and delivered to Oregon Electric Steel Rolling Mills, is the sum of \$41,608.89.

The difference in the amount of income and victory tax of the deceased, Harry J. Wolf, as reported on his original income and victory tax return for 1943, together with the deficiency and interest paid, as aforesaid, and the amount of income and victory tax for 1943 after eliminating from gross sales of the partnership (Alaska Junk Company) the merchandise sold and delivered to Oregon Electric Steel Rolling Mills and the cost of said merchandise, is the sum of \$24,955.82.

The parties stipulate that the above computations are true and correct and that in the event the Court shall determine that the prosecution of this action is not barred by Section 322(c) of the Internal Revenue Code of 1939, or by the principle of res adjudicata, and/or the doctrine of collateral estoppel, the judgment to be entered in favor of the plaintiff, shall be in accordance with and for the amount of overpayment shown in whichever of the above computations is determined by the Court to be applicable under the circumstances, to-wit:

\$41,608.89 or \$24,955.82 as the case may be;
(plus interest as provided by law).

XXVI.

That in the computation submitted by the Commissioner of Internal Revenue on October 6, 1949, pursuant to Rule 50 of the Tax Court's Rules of Practice, as indicated in paragraph XIV above, the amount of sales which the Tax Court concluded were capital contributions were not eliminated from the gross sales as originally reported by the partnership, nor was the cost of such sales eliminated from the cost of goods sold as originally reported by said partnership. That Monte L. Wolf, Executor of the Estate of Harry J. Wolf, deceased, on November 7, 1949, filed his acquiescence in the computation submitted by the Commissioner of Internal Revenue, and that on November 9, 1949, the Tax Court entered its final order and decision in the matter. A true and correct copy of said computation, acquiescence and decision is attached hereto, and it is stipulated that the same may be admitted in evidence and marked as "Defendant's Pre-Trial Exhibit 1".

XXVII.

The Tax Court proceedings entitled "Sam Schnitzer et al v. Commissioner of Internal Revenue", Docket Nos. 14208, 14209, 14278, 14279, 14280 and 14372, reported in 13 T.C. 43, are as shown and contained in the transcript of record No. 12471, which transcript accompanied the petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit. It is stipulated by the parties that said transcript is a true and correct copy of the pleadings, findings of fact, opinion

and decision of the Tax Court in said proceedings, and pertinent testimony and evidence adduced therein, together with the petition for review and per curiam opinion and judgment of the Court of Appeals for the Ninth Circuit. It is further stipulated that said copy of the transcript of the Tax Court proceedings as aforesaid may be marked and admitted in evidence as "Joint Pre-Trial Exhibit No. 1".

Defendant's Pre-Trial Exhibit No. 1

The Tax Court of the United States
Washington

Docket No. 14209

Estate of Harry J. Wolf, Deceased, by Monte L. Wolf, Executor of said Estate, Petitioner, vs. Commissioner of Internal Revenue, Respondent.

Decision

Pursuant to Opinion of the Tax Court promulgated July 14, 1949, the respondent filed a computation on October 6, 1949, and the petitioner, on November 7, 1949, filed an acquiescence in the computation as filed by the respondent. Now, therefore, it is

Ordered and Decided: That there is a deficiency in income and victory tax due from this petitioner for the calendar year 1943 in the amount of \$43,282.

/s/ Luther A. Johnson, Judge

Entered: Nov. 9, 1949.

[Title of Tax Court and Cause No. 14209.]

Respondent's Computation for Entry of Decision

The attached proposed computation is submitted, on behalf of the respondent, to The Tax Court of the United States, in compliance with its opinion determining the issues in this proceeding.

This computation is submitted in accordance with the opinion of the Tax Court, without prejudice to the respondent's right to contest the correctness of the decision entered herein by the Tax Court, pursuant to the statutes in such cases made and provided.

/s/ Charles Oliphant, Chief Counsel,
Bureau of Internal Revenue

Of Counsel:

Wilford H. Payne, Division Counsel,
John H. Pigg, Leonard A. Marcussen, Special
Attorneys, Bureau of Internal Revenue

JHP:wmm 9-21-49

AUDIT STATEMENT

In re: Estate of Harry J. Wolf, Deceased,
Monte L. Wolf, Executor,
3111 S. E. Lambert
Portland, Oregon

Docket No. 14209

Tax Liability for the Taxable Year Ended December 31, 1943

	<u>Deficiency</u>
Income and Victory Tax	\$43,282.00

Recomputation of tax liability prepared in accordance with the
Opinion of The Tax Court of the United States promulgated July 14, 1949.

Year 1942

Schedule 1

Net Income

Net income as disclosed by the deficiency notice dated March 3, 1947	\$112,661.84
-------------------------------------------------------------------------	--------------

As adjusted, based on the Opinion of The Tax Court of the United States promulgated July 14, 1949	<u>59,354.01</u>
---------------------------------------------------------------------------------------------------------	------------------

Adjustment (Decrease)	\$ 53,307.83
-----------------------	--------------

Addition:

(a) Adjustment of deduction for Contributions	\$ 723.04
--------------------------------------------------	-----------

Deduction:

(b) Adjustment of partnership income	<u>54,030.87</u>
-----------------------------------------	------------------

Net decrease in income	\$ 53,307.83
------------------------	--------------

Schedule 2

Explanation of Adjustments

(a) Net income is increased \$723.04, representing an adjustment to Contributions. Computation of adjustment is shown below:

Deduction for Contributions as per the Opinion of The Tax Court of the United States, see Exhibit A	\$ 723.04
Deduction for Contributions allowed by the deficiency notice	<u>1,446.08</u>
Decrease in deduction for Contributions	\$ 723.04

(b) Net income is decreased \$54,030.87, representing an adjustment to partnership income of petitioner, as a result of Opinion of The Tax Court of the United States holding that petitioner's wife, Jennie Wolf, held a partnership interest in the income of the Alaska Junk Company. Computation of Adjustment is shown below:

Partnership income as per the Opinion of The Tax Court of the United States, see Exhibit A	\$ 64,030.86
Partnership income as per the deficiency notice	<u>118,061.73</u>
Decrease in partnership income	\$ 54,030.87

Schedule No. 3

Computation of Income Tax

Net income from Schedule No. 1	\$ 59,354.01
Less: Personal exemption	<u>1,200.00</u>
Surtax net income	\$ 58,154.01
Less: Earned income credit (10% of 20% of \$64,030.86)	<u>1,280.62</u>
Income subject to normal tax	\$ 56,873.39
Normal tax on \$56,873.39 at 6%	3,412.40
Surtax on \$58,154.01	<u>28,621.68</u>
Tentative income tax	\$ 32,034.08

Year 1943

Schedule 4

<u>Net Income</u>	<u>Income Tax</u>	<u>Victory Tax</u>
Net income as disclosed by the deficiency notice dated March 3, 1947	\$218,481.00	\$224,657.75
As adjusted, based on the Opinion of The Tax Court of the United States promulgated July 14, 1949	<u>112,360.52</u>	<u>117,556.17</u>
Adjustment (Decrease)	\$106,120.48	\$107,101.58
Addition:		
(a) Adjustment of deduction for contributions	981.10	None
Deduction		
(b) Adjustment of partnership income	<u>107,101.58</u>	<u>107,101.58</u>
Net decrease in income	\$106,120.48	\$107,101.58

Schedule 5

Explanation of Adjustments

(a) Net income is increased \$981.10, representing an adjustment to contributions. Computation of adjustment is shown below:

Deduction for contributions as per the Opinion of The Tax Court of the United States, see Exhibit A	\$ 981.08
Deduction for contributions allowed by the deficiency notice	<u>1,962.18</u>
Decrease in deduction for contributions	\$ 981.10

(b) Net income is decreased \$107,101.58, representing an Adjustment to partnership income of the petitioner, as a result of Opinion of The Tax Court of the United States holding that petitioner's wife, Jennie Wolf, held a partnership interest in the income of the Alaska Junk Company. Computation of Adjustment is shown below:

Partnership income as per the Opinion of The Tax Court of the United States, see Exhibit A	\$117,101.58
Partnership income as per the deficiency notice	<u>224,203.16</u>
Decrease in partnership income	\$107,101.58

- 4 -

Estate of Harry J. Wolf, Deceased
Monte L. Wolf, Executor

Audit Statement

Schedule 6Computation of Income and Victory Tax

Income tax net income, from Schedule No. 4		\$112,360.52
Less: Personal exemption		<u>1,200.00</u>
Surtax net income		\$111,160.52
Less: Earned income credit		<u>1,400.00</u>
Balance subject to normal tax		\$109,760.52
Normal tax at 6% on \$109,760.52	\$ 6,585.63	
Surtax on \$111,160.52	<u>67,956.81</u>	
Total income tax		74,542.44
INCOME TAX LIABILITY		\$ 74,542.44
Victory tax net income, Schedule 4	\$117,556.17	
Less: Specific exemption	624.00	
Income subject to victory tax	<u>\$116,932.17</u>	
Victory tax before credit (5% of \$116,932.17)	5,846.61	
Less: Victory tax credit	<u>500.00</u>	
Net victory tax		<u>5,346.61</u>
Net income tax and victory tax		\$ 79,889.05
Income tax for 1942		\$ 32,034.05
1942 tax or 1943 tax, whichever is larger		\$ 79,889.05
Forgiveness feature:		
1942 tax or 1943 tax, whichever is smaller	\$32,034.05	
Amount forgiven (75% of \$32,034.05)	<u>24,025.54</u>	
Amount unforgiven		<u>8,008.51</u>
Total income and victory tax liability		\$ 87,897.56
Income and victory tax liability disclosed by return		<u>44,615.56</u>
Deficiency in income and victory tax		\$ 43,282.00

DEFENDANT'S PRE-TRIAL EXHIBIT No. 1
(Continued)

EXHIBIT A

Distribution of Partnership Income
of the Alaska Junk Company
Year 1942

Partnership income as disclosed by the deficiency notice and the Revenue Agent's Revised Statement dated February 3, 1947 \$236,123.45

Charitable Contributions as disclosed by the deficiency notice and the Revenue Agent's Revised Statement dated February 3, 1947 \$ 2,892.16

Distribution of Income and
Charitable Contributions

	<u>Interest</u>	<u>Salary</u>	<u>Ordinary Net Income</u>	<u>Total</u>	<u>Contributions</u>
Sam Schnitzer	25%	\$10,000	\$54,030.86	\$64,030.86	\$ 723.04
Rose Schnitzer	25%	----	54,030.86	54,030.86	723.04
Harry J. Wolf, Deceased	25%	10,000	54,030.86	64,030.86	723.04
Bennie Wolf, Deceased	25%	----	54,030.87	54,030.87	723.04
Totals		\$20,000	\$216,123.45	\$236,123.45	\$2,892.16

Year 1943

Partnership income as disclosed by the deficiency notice and the Revenue Agent's Revised Statement dated February 3, 1947 \$448,406.31

Charitable Contributions as disclosed by the deficiency notice and the Revenue Agent's Revised Statement dated February 3, 1947 \$ 3,924.33

Distribution of Income and
Charitable Contributions

	<u>Interest</u>	<u>Salary</u>	<u>Ordinary Net Income</u>	<u>Total</u>	<u>Contributions</u>
Sam Schnitzer	25%	\$10,000	\$107,101.57	\$117,101.57	\$981.08
Rose Schnitzer	25%	---	107,101.58	107,101.58	981.08
Harry J. Wolf, Deceased	25%	10,000	107,101.38	117,101.58	981.08
Bennie Wolf, Deceased	25%	---	107,101.58	107,101.58	981.08
Totals		\$20,000	\$428,406.31	\$448,406.31	\$3,924.33

Plaintiff's Contentions

Plaintiff contends as follows:

I.

That since the partnership reported its income on the accrual basis and the sales made to Oregon Electric Steel Rolling Mills were regarded by the partnership as bona fide sales and carried on the books as accounts receivable, the partnership was, as a matter of law, compelled to report the said sales as a part of its gross income and to include the same as gross income in reporting the distributive shares of the partners and in the net income of the partnership; that the partners were, as a matter of law, compelled to report in their individual income tax returns as income, the amount reported by the partnership as their distributive shares which included the income from the sales made to said Oregon Electric Steel Rolling Mills and the individual partners, including Harry J. Wolf, did include in his individual income tax return for the year 1943, his distributive share of the income of the partnership as it was reported by the partnership in its information return, which included income from the sales to Oregon Electric Steel Rolling Mills as aforesaid, and Harry J. Wolf paid the income taxes and victory taxes due thereon; that since the Commissioner of Internal Revenue disallowed the loss resulting from the failure of the Oregon Electric Steel Rolling Mills to pay said account receivable for the merchandise sold to it as aforesaid, and the Commissioner elected to treat

the delivery of the merchandise by the partnership to said corporation as a contribution to capital of the corporation, and determined a deficiency by reason of the disallowance of said bad debt loss deduction, and the Court affirmed the determination of the Commissioner, the payment of taxes on the portion of the income determined to be capital contribution, was erroneous and resulted in an overpayment in that the delivery of said merchandise by the partnership to the said corporation could not be sales and capital contributions at the same time, and since said delivery of merchandise would not constitute sales, it was improperly included in the net income and the taxes paid thereon were erroneously paid.

II.

This action to recover the taxes erroneously paid as aforesaid, is not barred by Section 322(c) of the Internal Revenue Code, but comes within the provision of Subdivision 2 of the exceptions to Section 322(c) of the Internal Revenue Code, in that the amount collected was in excess of the amount computed in accordance with the decision of the Board (Tax Court); that the claim for refund did not accrue until after the affirmance of the Commissioner's determination by the Courts and the payment of the deficiency determined thereby, and the Tax Court of the United States had no jurisdiction, referred to herein, to determine any refund, either in the original decision or in the judgment entered upon the computation under Rule 50.

III.

The judgment of the Tax Court of the United States is not *res adjudicata* in that the subject matter of the proceeding in the Tax Court of the United States was not the same as in this action and the proceedings in the two cases were between different parties. The Tax Court of the United States had no jurisdiction under the pleadings in that proceeding to determine the present claim for refund.

Defendant's Contentions

I.

This Action is Barred by Section 322(c) of the Internal Revenue Code of 1939.

The present suit involves the same tax for the same taxable year 1943 as was involved in the proceedings instituted by the plaintiff and related taxpayers before the Tax Court of the United States for redetermination of the deficiency in respect of their income tax for that taxable year.

Under the circumstances this action is barred by Section 322(c) of the Code. With certain exceptions not applicable here, the statute expressly provides that when a petition is filed with the Tax Court, which was the case here, no suit shall be instituted in any court for recovery of any part of "the tax for the taxable year" in respect of which the Commissioner of Internal Revenue has determined a deficiency.

The important thing with this statute is the fil-

ing of a petition in the Tax Court, rather than the decision of the Court. The taxpayer who elects to invoke the jurisdiction of the Tax Court must accept this consequence, and it is clear under the decided cases that the plaintiff has no right to sue the United States in this case.

II.

The Determination of the Tax Court Is Res Judicata

In the alternative, if this Court does not consider that Section 322(c) of the 1939 Code effectively bars this action, then it is barred by an application of the principles of res judicata. The same tax liability, the same tax year, and the same parties or their privies are involved in the instant suit as in the prior adjudication.

Upon hearing the same matter in the prior proceedings, the Tax Court decided the issues raised by the pleadings in favor of the Commissioner of Internal Revenue and promulgated its findings of fact and its opinion on July 14, 1949 (13 T.C. 43). The Court withheld entry of its final order and decision, pursuant to Rule 50 of its Rules of Practice, for the purpose of permitting the parties to submit computations of the proper tax liability pursuant to the Court's opinion.

The Commissioner filed his computation on October 6, 1949, showing a total liability of \$43,282.00 due and owing by the petition. Monte L. Wolf, Executor of the Estate of Harry J. Wolf, deceased, along with the other petitioners, had ample oppor-

tunity under Rule 50 to present his objections to the commissioner's computation of his tax liability in accordance with the Court's opinion.

Instead of objecting to the Commissioner's computation, Petitioner acquiesced on November 7, 1949, in the computation submitted to the Court by the Commissioner, and the Court entered its order and decision accordingly on November 9, 1949. This final order and decision, determining a deficiency of \$43,282.00 due and owing by said plaintiff, was affirmed on January 4, 1950, by the Court of Appeals for the Ninth Circuit (183 F.2d 70).

It is now too late, it is submitted, for the plaintiff and the other taxpayers to ask that any errors in the Rule 50 computation be corrected. The decision of the Tax Court which was affirmed by the Court of Appeals for this Circuit is a final decision which set at rest forever all questions litigated or which might have been litigated.

The plaintiff, it is submitted, has already clearly had his day in Court, and should not be permitted to relitigate the same issues in this Court, as a plain matter of justice and equity.

III.

Plaintiff's Recovery is Properly Denied on
Grounds of Estoppel.

In the alternative, if this Court does not consider that Section 322(c) and/or the principle of res judicata effectively barred this action, then it is contended that the plaintiff is estopped by the decision of the Tax Court and by his acquiescence in

the computation of the tax deficiency so ordered and decided by the Tax Court, as aforesaid, from any recovery herein.

Issues of Fact

I.

There are no issues of fact for determination.

Issues of Law

I.

Whether this action is barred by Section 322(c) of the Internal Revenue Code of 1939, because of the prior proceedings instituted before the Tax Court of the United States under the provisions of Section 272(a) of said Code?

II.

Whether, in the alternative, the decision of the Tax Court of the United States, affirmed by the Court of Appeals for the Ninth Circuit, is res judicata upon a suit for the recovery of any part of the tax paid in satisfaction of the deficiency in tax so determined in the Tax Court proceedings?

III.

Which of the computations set forth in paragraph XXV of this Pre-Trial Order is applicable under the circumstances in the event the Court shall determine that this action is not barred under Section 322(c) of the Internal Revenue Code of 1939

or by the principle of *res judicata*, that is, whether the amount of overpayment is \$41,608.89, as contended by the plaintiff, or \$24,955.82 as contended by the defendant?

Plaintiff's Exhibits

Plaintiff's Exhibit No. 1: Claim for Refund.

Defendant's Exhibits

Defendant's Exhibit No. 1: Computation, Acquiescence and Decision.

Joint Exhibits

Joint Exhibit No. 1: Transcript of the Record in Tax Court proceedings titled: "Sam Schnitzer et al v. Commissioner of Internal Revenue. Docket Nos. 14208, 14209, 14278, 14279, 14280, 14372.

Certain exhibits have been identified and received as pre-trial exhibits, the parties agreeing, with the approval of the Court, that no further identification of said exhibits is necessary and it is stipulated that said exhibits shall be received in evidence as a part of the stipulated facts.

The Parties hereto waive trial by jury and agree to the foregoing Pre-Trial Order and stipulate that this action shall be submitted to the Court for determination upon this Pre-Trial Order and the stipulated facts set forth therein.

The Court being fully advised in the premises;
now

Orders, that the foregoing Pre-Trial Order shall

not be amended except by consent of both Parties or to prevent manifest injustice; and it is further

Ordered, that this Pre-Trial Order supersedes all pleadings.

Dated at Portland, Oregon, this 28th day of February, 1955.

/s/ GUS J. SOLOMON,
Judge

Approved:

/s/ A. J. Bischoff

/s/ R. S. Jacob

Attorneys for Plaintiff

/s/ C. E. Luckey

Attorney for Defendant

/s/ John D. Picco

Of Counsel for Defendant

[Endorsed]: Filed Feb. 28, 1955.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having duly come on for trial, plaintiff appeared herein by S. J. Bischoff, his Attorney, the defendant appeared herein by C. E. Luckey, United States Attorney for the District of Oregon, and by John D. Picco, its attorneys; whereupon the cause was submitted to the Court upon a

stipulation of facts contained in the Pre-trial Order entered herein on the 28th day of February, 1955, and upon the exhibits described therein, briefs of the respective parties were submitted and argument made to the Court, the Court now makes and files herein the following:

Findings of Fact

The Court does hereby adopt, and makes as its findings of fact, all of the facts contained in the stipulation of the parties incorporated in the aforesaid Pre-trial Order as if herein fully and at length set forth.

Upon the aforesaid findings of fact, the Court does hereby make and file herein the following:

Conclusions of Law

I.

That the claim for refund filed by the plaintiff and described in the findings of fact is not barred by the provisions of Section 322(c) of the Internal Revenue Code and the Court has jurisdiction of this suit upon said claim by virtue of the exception No. 2 to Section 322(c) of the Internal Revenue Code.

II.

The plaintiff's cause of action is not barred by the principles of res judicata or collateral estoppel.

III.

In computing the amount of refund to which plaintiff is entitled, there should be eliminated the cost of merchandise sold and delivered to Oregon Electric Steel Rolling Mills and the costs of sales reported in the original return should be reduced by the actual cost of the merchandise sold and delivered to Oregon Electric Steel Rolling Mills.

IV.

Plaintiff is entitled to a judgment against the defendant for the sum of \$41,608.89 with interest thereon at the rate of 6% per annum from December 30, 1949, to the date of payment as required by law, together with his costs and disbursements incurred herein.

Dated: August 19, 1955.

/s/ CLAUDE McCOLLOCH,
Judge.

Acknowledgment of Service attached.

[Endorsed]: Filed Aug. 19, 1955.

In the District Court of the United States for the
District of Oregon

Civil No. 7097

MONTE L. WOLF, Executor of the Estate of
Harry J. Wolf, deceased, Plaintiff,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

JUDGMENT

Upon the findings of fact and conclusions of law
duly made and filed herein, it is

Ordered and adjudged that the plaintiff Monte
L. Wolf, Executor of the Estate of Harry J. Wolf,
deceased, do have judgment for and recover of and
from The United States of America, the defendant
herein, the sum of \$41,608.89 with interest thereon
at the rate of 6% per annum from December 30,
1949, to date of payment as required by law, and
that plaintiff have judgment for his costs and dis-
bursements incurred herein in the sum of \$
as taxed by the Clerk of this Court.

Dated: August 19, 1955.

/s/ CLAUDE McCOLLOCH,
Judge.

Acknowledgment of Service attached.

[Endorsed]: Filed Aug. 19, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Monte L. Wolf, Executor of the Estate of Harry J. Wolf, deceased, Plaintiff, and to Jacob, Jones & Brown and S. J. Bischoff, his Attorneys:

Notice is hereby given that the United States of America, defendant above-named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final Judgment entered in this action on August 19, 1955 in favor of plaintiff and against defendant.

Dated: October 14, 1955.

C. E. LUCKEY,
U. S. Attorney, District of Oregon.
/s/ VICTOR E. HARR,
Asst. U. S. Attorney,
Of Attorneys for Defendant.

[Endorsed]: Filed Oct. 14, 1955.

[Title of District Court and Cause.]

MOTION

Comes now defendant, by and through its attorneys, C. E. Luckey, United States Attorney for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, and moves the Court for

an order extending the time for filing the record on appeal and docketing the within action in the United States Court of Appeals for the Ninth Circuit to ninety days from October 14, 1955, the date of filing of Notice of Appeal. This motion is based on the grounds that The Solicitor General requires additional time to consider said appeal fully.

Dated: November 9, 1955.

C. E. LUCKEY,
U. S. Attorney, District of Oregon.
/s/ VICTOR E. HARR,
Asst. United States Attorney.

[Endorsed]: Filed Nov. 10, 1955.

[Title of District Court and Cause.]

ORDER

This matter coming on to be heard ex parte upon motion of defendant for an order extending time for the filing of the record on appeal and docketing the within action in the United States Court of Appeals for the Ninth Circuit, to enable The Solicitor General to have additional time to consider said appeal, and the Court being fully advised in the premises,

It is ordered that the time for filing the record on appeal and docketing the within action be and it is hereby extended to ninety days from October 14, 1955, the date of filing of the Notice of Appeal.

Dated at Portland, Oregon, this 14th day of November, 1955.

/s/ CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed Nov. 14, 1955.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

To the Clerk of the Above-entitled Court:

Defendant designates the entire record, including this designation, to be forwarded to the United States Court of Appeals for the Ninth Circuit in the appeal of the above-entitled case.

Dated at Portland, Oregon, this 30th day of December, 1955.

C. E. LUCKEY,
U. S. Attorney for the District of
Oregon.

/s/ VICTOR E. HARR,
Asst. U. S. Attorney,
Of Attorneys for Defendant.

Certificate of Service attached.

[Endorsed]: Filed Dec. 30, 1955.

[Title of District Court and Cause.]

ORDER RELEASING EXHIBITS

This matter coming on upon motion of the defendants, and

It Appearing to the Court that Notices of Appeal from the judgments in the above entitled cases were filed by the defendants on 14th day of October, 1955, pursuant to Rule 73(a) of the Federal Rules of Civil Procedure, and that the exhibits entered upon the trial of the above entitled cases are necessary for a determination of this matter upon appeal.

It Is Therefore Ordered that all the exhibits introduced upon the trial of the above-entitled cases be forwarded to the Clerk of the United States Court of Appeals for the Ninth Circuit, together with the records in the above-entitled cases.

Dated this 30th day of December, 1955.

/s/ CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed Dec. 30, 1955.

[Title of District Court and Cause.]

DOCKET ENTRIES

1953

July 31—Filed complaint.

Aug. 1—Issued summons to Marshal.

Aug 7—Filed summons with Marshal's return.

Oct. 5—Motion by Atty. Dressler for extension of time denied.—F.

Oct. 19—Filed def's motion to consolidate with Civ. 7098, 7099, 7100 and 7102.

Oct. 19—Filed def's motion to dismiss complaint.

Oct. 19—Entered order consolidating with Civ 7098 to 7102 inc.—McC.

Oct. 20—Filed above order.

Nov. 2—Record of hearing on motion US to dismiss and order reserving decision.

Dec. 2—Filed answer.

1954

July 2—Entered order setting for pretrial conference on Sept. 20, 1954 and for trial on Sept. 28, 1954.—McC.

Sept. 10—Entered order resetting for P.T.C. on Nov. 15, 1954 and for trial on Nov. 16, 1954.—McC.

Oct. 28—Entered order striking P.T.C. and trial dates.—McC.

Dec. 17—Entered order setting for pre-trial conference Jan. 31, 1955.—F.

1955

Jan. 5—Entered order setting for trial on Feb. 23, 1955.—S.

1955

Jan. 24—Filed stipulation for consolidation.

Feb. 16—Entered order setting for trial on March 1, 1955.—S.

Feb. 28—Filed Exhibit No. 1.

Feb. 28—Entered order allowing Pltf to April 1 and Deft to May 10 to file briefs and Pltf to June 1 to reply.—S.

Feb. 28—Filed and entered order of consolidation with Civ 7098-7099-7100-7101 and 7102 for trial.—S.

Feb. 28—Filed and entered pretrial order.—S.

Mar. 29—Filed Pltfs brief.

May 10—Entered order extending time 30 days to file brief of Deft.—S.

May 26—Entered order extending time to July 10, 1955 to file Defts brief. Filed.—McC.

July 8—Filed Def's brief.

July 14—Entered order setting for argument on July 25, 1955.—McC.

July 25—Record of argument on merits and submitted.—McC.

Aug. 19—Filed and entered findings of fact and conclusions of law.—McC.

Aug. 19—Filed and entered judgment.—McC.

Oct. 14—Filed Notice of Appeal by U. S. (copy mailed).

Nov. 10—Filed motion of U. S. for extension of time to file appeal.

Nov. 14—Filed and entered order allowing Deft 90 days from Oct. 14 to file and docket appeal.—McC.

1955

Dec. 30—Filed and entered order to forward exhibits.—McC.

Dec. 30—Filed designation of contents of record on appeal.

1956

Jan. 3—Filed reporter's transcript July 25, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Oregon—ss.

I, R. DeMott, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Complaint; Motion for consolidation; Defendant's motion to dismiss complaint; Order consolidating cases for hearing; Record of hearing on motion to dismiss complaint; Answer; Stipulation for entry of order consolidating actions for trial; Order consolidating cases for trial; Pre-trial order; Findings of fact and conclusions of law; Judgment; Notice of appeal; Motion for order extending time to docket appeal; Order extending time to docket appeal; Designation of contents of record on appeal; Order to forward exhibits and Transcript of docket entries, constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 7097, in which The United States of America

is the defendant and the appellant and Monte L. Wolf, Executor of the Estate of Harry J. Wolf, deceased is the plaintiff and appellee; that the said record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant and in accordance with the rules of this court.

I further certify that there is enclosed herewith reporter's transcript and Joint Exhibit No. 1.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 24th day of January, 1956.

[Seal] R. DE MOTT,
 Clerk
/s/ By THORA LUND,
 Deputy

[Title of District Court and Cause.]

TRANSCRIPT OF PROCEEDINGS

Portland, Oregon, July 25, 1955

Before: Honorable Claude McColloch, Chief Judge.

Appearances: Mr. S. J. Bischoff, of attorneys for plaintiffs. Mr. John Picco, Attorney, Internal Revenue Bureau, and Mr. Victor E. Harr, Assistant United States Attorney, of attorneys for defendant.

Mr. Bischoff: We are fortunate in this case to be able to submit the issues upon an agreed statement of facts. There is no issue of fact to be resolved, and the agreed facts upon which the issues of law depend are very few and simple.

(Thereupon counsel for the respective parties argued the above causes to the Court and thereafter the Court took the same under advisement.)

[Endorsed]: Filed January 3, 1956.

[Endorsed]: No. 15011. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Monte L. Wolf, Executor of the Estate of Harry J. Wolf, deceased, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed: January 26, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15011

UNITED STATES OF AMERICA,

Appellant,

vs.

MONTE L. WOLF, Executor of the Estate of
Harry J. Wolf, Deceased, Appellee.

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY

The District Court erred in the following respects:

I.

In concluding and holding as a matter of law that the plaintiff was not barred from claiming a refund of the taxes involved in his suit.

II.

In concluding and holding as a matter of law that plaintiff's cause of action is not barred by the principles of *res judicata* or collateral estoppel.

III.

In the alternative, in that judgment in favor of the plaintiff was for an amount contrary to its Conclusion of Law No. III and contrary to the

stipulated facts contained in paragraphs XXIV, XXV and XXVI of the Pre-trial Order, which facts the District Court adopted and made as its Findings of Fact and which indicate that the judgment should not be more than the smaller amount set out in the aforesaid paragraphs of the Pre-Trial Order in the event its Conclusions of Law are sustained.

IV.

In not concluding and holding that refund of the amount involved is barred by Section 322 of the Internal Revenue Code of 1939.

V.

In not concluding and holding that the decision of the Tax Court of the United States published in 3 Tax Court Opinions 43 is *res judicata* and barred recovery in the District Court in respect to the income taxes paid by plaintiff for the same taxable years as were involved in the Tax Court proceeding.

VI.

In not concluding and holding that the plaintiff's cause of action is barred by the principles of *res judicata* and/or collateral estoppel.

VII.

In not entering judgment in defendant's favor and against the plaintiff.

Dated this 30th day of January, 1956, at Portland, Oregon.

C. E. LUCKEY,

U. S. Attorney for the District of
Oregon

/s/ VICTOR E. HARR,

Asst. U. S. Attorney

Certificate of Service by Mail attached.

[Endorsed]: Filed Feb. 2, 1956. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

**MOTION TO CONSOLIDATE CASES FOR
BRIEFS AND HEARING**

Comes now the appellant, United States of America, by and through C. E. Luckey, United States Attorney for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, and moves the Court for an order of consolidation of the above-entitled cases for hearing and determination in the above-entitled Court, and further that a consolidated brief be permitted to be filed herein in respect to all of the above-entitled causes.

In support of this motion appellant represents that the said causes were consolidated for trial and determination in the court below and that the record submitted was considered by the Court as applicable to a determination of each of the said causes; that the said actions all grew out of a consolidated

proceeding before the Tax Court of the United States in the case of Sam Schnitzer et al. vs. Commissioner, 13 T.C. 43, and the decision of that Court in that proceeding.

Dated at Portland, Oregon this 1st day of February, 1956.

C. E. LUCKEY,

U. S. Attorney for the District of
Oregon

/s/ VICTOR E. HARR,

Asst. U. S. Attorney

So Ordered:

/s/ WILLIAM DENMAN,

United States Circuit Court Judge

/s/ WM. HEALY,

/s/ WALTER L. POPE,

Judges, U. S. Court of Appeals for
the Ninth Circuit

Certificate of Service by Mail attached.

[Endorsed]: Filed Feb. 6, 1956. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Causes.]

DESIGNATION OF THE RECORDS FOR
PRINTING AND MOTION TO WAIVE
PRINTING OF PART OF RECORDS

Appellant, United States of America, in accordance with Rule 17(6), Rules of the United States Court of Appeals for the Ninth Circuit, hereby designates for printing the following parts of the records in the above-entitled cases material to the consideration of the appeals and further moves as follows:

1. Designates for printing the entire record in the case of United States vs. Monte L. Wolf, Executor of the Estate of Harry J. Wolf, Deceased (No. 15,011), with the exception of Joint Exhibit No. 1.

2. Moves for an order that the record in the aforesaid case of United States vs. Monte L. Wolf, Executor of the Estate of Harry J. Wolf, Deceased (No. 15,011), shall also constitute the record in the case of United States vs. Manuel Schnitzer, Harold Schnitzer, Leonard Schnitzer, Executors of the Estate of Sam Schnitzer, Deceased (No. 15,015), and it shall be unnecessary to print the record in the said case (No. 15,015) with the exception only of the following portions of the record in said case (No. 15,015) which shall be printed:

- (a) Pre-trial order (excluding exhibits).
- (b) Findings of fact and conclusions of law.
- (c) Judgment order.
- (d) Notice of appeal.

3. Designates for printing the entire record in the case of United States vs. Monte L. Wolf, Transferee of the Estate of Jennie Wolf, Deceased (No. 15,012), including all exhibits attached thereto save and except for Joint Exhibit No. 1.

4. Moves for an order that the record in the aforesaid case of United States vs. Monte L. Wolf, Transferee of the Estate of Jennie Wolf, Deceased (No. 15,012), shall also constitute the record in the cases of United States vs. Blossom M. Grayson, Transferee of the Estate of Jennie Wolf, Deceased (No. 15,013), and United States vs. Charlotte C. Cohon, Transferee of the Estate of Jennie Wolf, Deceased (No. 15,014), and it shall be unnecessary to print the records in the said cases (No. 15,013 and No. 15,014) with the exception only of the following portions of the records in each of said cases (No. 15,013 and No. 15,014) which shall be printed respectively:

(a) Pre-trial orders in each of the cases (No. 15,013 and No. 15,014). (Excluding exhibits.)

(b) The findings of fact and conclusions of law in each of said cases (No. 15,013 and No. 15,014).

(c) The judgment orders in each of said cases (No. 15,013 and No. 15,014).

(d) Notice of appeal.

5. Moves that all of the records in the aforesaid cases, including Joint Exhibit No. 1, may be referred to by either party in briefs and/or argument, even though not designated for printing, as if the entire records in said cases had been printed.

6. Designates additionally for printing in the

printed records in United States vs. Monte L. Wolf, Executor of the Estate of Harry J. Wolf, Deceased (No. 15,011), and in United States vs. Monte L. Wolf, Transferee of the Estate of Jennie Wolf, Deceased (No. 15,012), the following:

- (a) Statement of points upon which defendant-appellant intends to rely;
- (b) Motion and order for consolidation of these cases for briefing and hearing; and
- (c) This designation and order.

The undersigned states to the Court as the reason for not printing the complete records in cases numbered 15,013, 15,014 and 15,015 that the printing thereof would involve repetition of matter already included in cases numbered 15,011 and 15,012, respectively, and the undersigned further submits that the cost of printing Joint Exhibit No. 1 would be excessive.

Dated: February 24, 1956.

/s/ CHARLES K. RICE,
Acting Asst. Attorney General,
Attorney for Appellant

Certificate of Service attached.

[Endorsed]: Filed Feb. 27, 1956. Paul P. O'Brien,
Clerk.

